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Attorneys for Plaintiff Allergy Research Group, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

ALLERGY RESEARCH GROUP, LLC,	:	JOINT MOTION FOR EXTENSION OF
	:	TIME TO COMPLETE DISCOVERY
Plaintiff / Counterclaim-Defendant,	:	
	:	Case No: 2:21-CV-00073-TC-JCB
v.	:	
	:	
REZ CANDLES, INC.,	:	
	:	
Defendant / Counterclaim-Plaintiff	:	

Based on ongoing settlement negotiations, Plaintiff/Counterclaim-Defendant Allergy Research Group, LLC (“ARG”) and Defendant/Counterclaim-Plaintiff Rez Candles, Inc. (“Rez”), through their respective undersigned counsel of record, jointly move this Court for an extension of time to complete discovery and respectfully request that certain dates in the Amended Scheduling Order (ECF No. 80), be reset. In support of their motion, the Parties state as follows.

ARG filed its Complaint in this action on February 3, 2021. (ECF No. 2). Rez filed a motion to dismiss in response (ECF Nos. 15-16), which the Court denied in part (ECF No. 34).

Rez then filed an Answer and Counterclaims to the Complaint on September 23, 2021 (ECF No. 37). On October 14, 2021, ARG moved to dismiss the Counterclaims, which Rez opposed (ECF Nos. 38, 45). Before ARG's motion to dismiss was resolved, the Parties attended the Initial Scheduling Conference with Magistrate Judge Bennett, and Judge Bennett entered the initial Scheduling Order in this case on November 1, 2021. (ECF Nos. 43-44.)

On April 4, 2022, Judge Campbell granted ARG's motion to dismiss, dismissing the Counterclaims in their entirety without prejudice (ECF No. 57). On May 4, 2022, Rez filed a Motion for Leave to File Amended Answer and Counterclaims ("Motion to Amend Counterclaims"), which Judge Campbell denied on August 31, 2022 (ECF Nos. 62, 78).

Because the initial Scheduling Order was entered before Judge Campbell had ruled on ARG's motion to dismiss the initial counterclaims, it contained a two-track discovery schedule—one track with discovery dates applying "if all counterclaims are dismissed," and another track with discovery dates applying "if any counterclaims survive." On August 31, 2022, the Parties filed a Joint Motion for Amended Scheduling Order seeking an extension of the discovery deadlines and related dates (ECF No. 79). Coincidentally, on the same day, Judge Campbell denied Rez's Motion to Amend Counterclaims, dismissing all counterclaims with prejudice. This Court granted the joint request to extend deadlines and entered the Amended Scheduling Order on September 1, 2022 that the Parties now seek to amend.

Since entry of the initial Scheduling Order, the Parties have exchanged some discovery related to the claims in ARG's Complaint, but paused the exchange of discovery to engage in settlement negotiations. The desire for settlement was also part of the basis for the Parties' first joint request to extend deadlines. Although these settlement negotiations are taking longer than anticipated, both Parties are continuing to attempt to engage in them in good faith and both desire

to settle this action. Although the Parties were hopeful that they would be able to resolve this action before the November 30, 2022 fact discovery deadline, they have been unable to do so as of the time of filing this Motion. The Parties plan to continue to discuss settlement after the filing of this Joint Motion, but will need additional time to finalize settlement or to complete fact and expert discovery on the claims in ARG's Complaint if settlement cannot be reached. Accordingly, to allow more time for settlement discussions and discovery if it is needed, the Parties respectfully request that the following upcoming case deadlines be extended as follows:¹

<u>Event</u>	<u>Current Date</u>	<u>Proposed New Date</u>
Last day to serve written discovery	October 27, 2022	January 25, 2023
Close of fact discovery	November 30, 2022	February 28, 2023
Expert Disclosures (for parties bearing burden of proof)	January 16, 2023	May 1, 2023
Expert Counter-Disclosures	February 15, 2023	May 31, 2023
Expert Reports (for parties bearing burden of proof)	January 16, 2023	May 1, 2023
Expert Counter-Reports (for all parties)	March 29, 2023	July 11, 2023
Expert Rebuttal Reports (for all parties)	April 26, 2023	August 7, 2023
Last day for expert discovery	June 7, 2023	September 13, 2023
Deadline for filing dispositive or potentially dispositive motions	July 5, 2023	October 12, 2023

¹ A proposed revised scheduling order that tracks this court's Amended Scheduling Order, with the exception of these extended dates, is attached to this Joint Motion as Exhibit A.

Deadline for filing partial or complete motions to exclude expert testimony	July 5, 2023	October 12, 2023
Rule 26(a)(3) pretrial disclosures for Plaintiff(s)	November 16, 2023	March 1, 2024
Rule 26(a)(3) pretrial disclosures for Defendant(s)	November 30, 2023	March 14, 2024
Special Attorney Conference on or before	December 8, 2023	March 7, 2024
Settlement Conference on or before	December 8, 2023	March 7, 2024
Final Pretrial Conference	January 8, 2024 at 3:00pm	April 8, 2024
Jury Trial	January 29, 2024 at 8:30 a.m.	April 29, 2024

Good cause exists for these requested extensions. This case involves fact-intensive claims. The Parties have delayed conducting some of their fact discovery while attempting to reach an amicable resolution and avoid incurring further costs. Extending discovery deadlines will allow the Parties to complete fact discovery and ready this case for filing dispositive motions if settlement cannot be reached.

The Parties have previously jointly requested an extension of the discovery schedule and fact discovery deadline, through their Joint Motion filed on August 31, 2022. This second Joint Motion is brought not for the purpose of delay or to multiply the proceedings, but to avoid other delays that are likely to occur without the requested extensions and to encourage good faith settlement negotiations.

WHEREFORE, should the foregoing meet with the Court's approval, the Parties respectfully request that the Court grant the Parties' Joint Motion and amend the Amended Scheduling Order in this case as requested above.

RESPECTFULLY SUBMITTED this 29th day of November, 2022.

By: /s/ Monica S. Call

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2022, a copy of the foregoing was served via CM/ECF on the following attorneys for Defendant Rez Candles, Inc. as follows:

William O. Kimball

William B. Chadwick

Attorneys for Defendant

/s/ Monica S. Call

Monica S. Call